

State of Uttar Pradesh

Vs

Ram Manorath

Criminal Appeals No. 217 to 222 of 1969

(J. M. Shelat, H. R. Khanna JJ)

14.01.1972

JUDGMENT

KHANNA, J. -

1. Ram Manorath alias Bhaiya Lal (33) was tried in the court of Sessions Judge, Allahabad, on four counts under Section 302, I.P.C., for causing the death of Kalloo Shah (50), Gulbahar (50), Shri Ram (52) and Dhunnu alias Rehman (22) and on two counts under Section 307, I.P.C., for firing with gun at Habib and Shafi and thereafter for firing at Babu. There was also a charge against the accused under Section 323, I.P.C., for causing hurt to Ahmed Ali alias Basai. PW. The learned Sessions Judge acquitted the accused on all the counts. Six appeals were filed by the State against the acquittal of the accused, but they were all dismissed by the Allahabad High Court by a common judgment. Criminal appeals Nos. 217 to 222 of 1969 have been filed by the State of Uttar Pradesh by special leave against the above judgment of the High Court. This judgment would dispose of all the six appeals.

2. The occurrence, which is a subject-matter of this appeal, took place in village Kara at a distance of five miles from police Station Saini in the district of Allahabad. The prosecution case is that Ram Kripal (PW 21) and the accused are near collaterals and their relations with each other were strained. There was a fight regarding a wall and in that connection, Ram Prasad, father of Ram Kripal, lodged a report against the accused in June, 1960. Another report was lodged by a Ram Kripal against the accused in July, 1960 regarding an encroachment made by the accused on Ram Kripal's land. Some cross-complaints were thereafter made by the accused and Ram Kripal against each other. About a couple of years before the present occurrence, two children of Ram Kripal died as a result of poisoning after taking some Status. It was then suspected that the accused was responsible for that poisoning. A day before the present occurrence, there was an exchanges of hot words between the accused and Ram Kripal in the presence of Shri Hardeo Sahai Bhargava, Tehsildar (PW 8) who was camping at Kara in connection with the possession of land.

3. On February 26, 1965, at about 10 a.m., it is stated, the accused armed with a double-barrel gun and a bandolier containing a number of cartridges went towards his filed. The accused then noticed that Kalloo Shah had climbed a Bair tree belonging to the accused and was collecting dry twinges from there. The accused asked Kalloo as to why he was plucking Bair from the tree, to which Kalloo replied that he was collecting only dry twigs. The accused thereupon remarked as to how Kalloo who was a helper of Ram Kripal could collect twigs from the tree of the accused. At the same time the accused fired a shot at kalloo. Kalloo fell down on the ground and died immediately. This occurrence was witnesses by Bindeshwari (PW 1), Piyare (PW 5) and Kumari Jasirun (PW 6) who is aged nine years and is daughter of Kalloo.

4. After killing Kalloo Shah, it is stated, the accused came in front of the house of Bhaggan (PW 9) at a distance of about 800 paces from the spot where Kalloo had been killed. The accused met there Gulbahar who happened to be present at that place in connection with the stitching of his 'month' by Makkoo cobbler (PW 10). On arrival near Gulbahar the accused shot at Gulbahar with the remark that he was a supporter of Ram Kripal. Gulbahar fell down and succumbed to the injuries received by him. This occurrence was witnessed by Bhaggan (PW 9) and Makkoo (PW 10).

5. After the murder of Gulbahar the accused is stated to have gone to the house of Shri Ram deceased, at a distance of 300 paces from the place where Gulbahar was killed. Shri Ram had just returned to the house after taking a bath in the Ganges and was going to offer his prayers. The accused called Sri Ram from outside the house. When Sri Ram came out of the house the accused told Sri Ram that he had come to give poison to Sri Ram. At the same time the accused fired a shot in the chest of Sri Ram as a result of which Sri Ram fell down on the Chabutra and died then and there. This occurrence was witnessed by Santosh Kumar, aged eight years, son of Sri Ram as well as Shrimati Shakuntla Devi (PW 4), wife of Sri Ram.

6. Habib Ahmed (PW 13) and Shafi, according to the prosecution case, met Ram Kripal PW at about 10.30 a.m. Ram Kripal was then running, and on the enquiry of Habib stated that the accused had started shooting. Ram Kripal then went away. About 15 minutes thereafter the accused came there. When Habib asked the accused as to why he was unnecessarily quarrelling with Ram Kripal, the accused said that Habib too was a supporter of Ram Kripal. Saying these words, the accused fired towards Habib. Both Habib and Shafi saved themselves by taking shelter behind a wall. The accused also met Babu (PW 11). When Babu greeted the accused, the latter fired at Babu also after saying that he too was a supporter of Ram Kripal. Babu saved himself by sitting down and the pellets hit the wall of a nearby house. Babu thereafter ran to his house.

7. Dhunnu deceased, it is further alleged by the prosecution, then passed in front of the cycle repair shop of Ahmed Ali Basai (PW 7) and went towards a crossing at a distance of about 25 paces from the shop of Ahmed Ali. As soon as Dhunnu reached the crossing, he met the accused who came from another direction. The accused then said of Dhunnu that he was going to give position to Dhunnu as he belonged to Ram Kripal's part. Saying these words the accused fired twice and Dhunnu, as a result of which Dhunnu died instantaneously. This occurrence was witnessed by Ahmed Ali (PW 7), Mujtaba Karim alias Lal (PW 12), Kumari Radha who is aged 10 years (PW 14), Shrimati Ram Dularel (PW 15) and Dost Mohammad (PW 22). Mujtaba Karim, whose shop is near the spot where Dhunnu was killed, then advanced towards the accused, but the latter threatened to shoot at Mujtaba Karim also. Mujtaba Karim folded his hands in supplication and on arriving near the accused, caught hold of the gun. There was a struggle between Mujtaba Karim and the accused, whereupon Ahmed Ali too joined Mujtaba Karim. Some other persons also joined and with their help, the accused was overpowered after being given a beating. The hands of the accused were then tied and he was carried to the spot where the dead body of Dhunnu was lying and placed there. The gun too was placed by the side of the accused. During the course of scuffle with the accused, Mujtaba Karim received a number of simple injuries.

8. Dost Mohammad (PW 22), it is further stated, got report Ka-1 written from Jarrarkazil (PW 2), who is student, at about 11.30 a.m. and signed it. The report was then taken by Dost Mohammed to police station Saini and lodged there at 12.15 p.m. Sub-inspector Akbar Singh (PW 26) then went to the village Kara and arrived there at about 1 p.m. The Sub-inspector saw the different dead bodies and prepared the inquest reports. Blood-stained earth was taken into possession by the Sub Inspector from the different spots. The Sub-inspector also found the accused lying tied near the dead body of

Dhunnu. Gun Ex-1 had been placed near the accused and he was also having a bandolier on his person. A branch of Bair tree with pellets embedded in it was also taken into possession by the Sub-inspector from the place where the Sub-inspector had found the dead body of Kalloo Shalt. Pellets were also found by the Sub-inspector to be embedded on a portion of the door panel and door frame of Bhaggan's house. Those portions were cut and were taken into possession by the Sub-Inspector.

9. Post mortem examination on the bodies of the four deceased persons was performed by Dr. A. P. Mathur (PW 20) on February 27, 1965, from 12 noon onwards.

10. The accused, Ahmed Ali and Mujtaba Karim were got examined from Dr. Kamaluddin. The accused was found to have eight simple injuries caused with blunt weapon, while Ahmed Ali and Mujtaba Karim had six and four simple injuries respectively.

11. The accused in his statement under Section 342 of the Code of Criminal Procedure admitted that he was a collateral of Ram Kripal and there had been litigation between them. The accused also admitted that the gun Ex-1 and bandolier Ex-2 belonged to him and were with him on the day of occurrence. All the other prosecution allegations were denied by the accused. He further gave the following versions :

"All the prosecution witnesses are inimical towards me, and are partymen of Ram Kripal. Ahmed Ali, Mujtaba Karim, Habib Ahmed, Babu, Dost Mohammed quarrelled with me on the Barawafat day. Sri Kazmi advocate is also inimical towards me as my father was his rival candidate in the election for Pradhanship. Since the election days the witnesses are under the influence of Sri Kazmi. Since then Sri Kazmi is after me.

We got in the partition plot No. 146 and the same was in our cultivatory possession. Barley was grown in that plot. I came to know that Ram Kripal and Ram Prasad wanted to get that plot harvested by force. On getting this information I engaged some men to get that crop harvested. I also called my maternal uncle to help me in the matter. My maternal uncle accordingly came with another person. After their arrival we went to the said field and got the crop harvested hastily. By then Ram Kripal along with 10 or 12 others came there armed, and attacked me, as a result of which I received a large number of injuries. When I found that my life was in danger, myself, my maternal uncle and his companion started firing. I do not know who got hurt due to the shots fired by us. All the four deceased received injuries during that incident, and they had died in the vicinity of that field. I became senseless after that. When I regained consciousness I was still at that place and found the Darogha had arrived. At that time I did not find any of my companions there. I have nothing else to say."

No evidence was produced in defence.

12. The learned Sessions Judge took the view that the prosecution case was concocted and true facts had not been brought before the court. The prosecution witnesses were found to be partisan and their evidence was found to be in conflict with the medical evidence. Investigation of the case was also found to be not very fair. In the light of the above, it was not considered necessary to go into the question as to whether the accused had been able to prove the defence version of the incident.

13. In appeal the learned judges of the High Court took the same view as had been taken by the Sessions Judge. In the result, the appeals were dismissed.

14. We have heard Mr. Unyal on behalf of the appellant. The learned counsel has assailed the judgment of the High Court in so far as it has affirmed the acquittal of the accused on the charge of murder of Kalloo Shah, Gulbahar, Sri Ram and Dhunnu deceased.

15. It cannot be disputed that Kalloo Shah, Gulbahar, Sri Ram and Dhunnu died as a result of gunshot injuries. Dr. Mathur who performed post mortem examination on the dead bodies of the four deceased persons, found gunshot wounds on those bodies and expressed the opinion that those persons had died as a result of those gunshot injuries. The question with which we are concerned in these appeals is whether it was the accused who had caused the gunshot wounds as alleged by the prosecution.

16. The prosecution examined Bindeshwari (PW 1), Piyare (PW 5) and Kumari Jasirun (PW 6) as eye-witnesses relating to the murder of Kalloo Shah. Bhaggan (PW 9) and Makkoo (PW 10) gave ocular evidence about the murder of Gulbahar. As regards the murder of Sri Ram, the ocular evidence consists of the statements of Santosh Kumar (PW 3) and Shakuntla Devi (PW 4). Regarding the murder of Dhunnu, the prosecution examined Ahmed Ali (PW 7), Mujtaba Karim (PW 12), Kumari Radha (PW 14), Ram Dulare (PW 15) and Dost Mohammed (PW 22) as eye-witnesses. The evidence of the above mentioned witnesses, as stated earlier, was not believed by the learned Sessions Judge who had the advantage of looking at the demeanour of these witnesses. On appeal the learned judges of the High Court took the same view of the said evidence as had been taken by the Sessions Judge. In view of the concurrent findings regarding the credibility of the aforesaid evidence, this Court would not reappraise that evidence unless it is shown that the assessment of the said evidence by the trial judge and the High Court is perverse or manifestly unreasonable or the courts below have failed to take into account some crucial and vital piece of evidence. In case the order made by the courts below is one of acquittal, this Court would be still more reluctant to interfere with the appraisal of the evidence.

17. Mr. Unyal has not been able to point to any material on the record as may induce us to interfere with the assessment of the prosecution evidence made by the courts below. In view of the concurrent findings of the courts below regarding the credibility of the prosecution evidence, we do not consider it necessary to discuss that evidence in detail. We may, however, advert to some features of the prosecution evidence which create considerable doubt regarding its veracity.

18. So far as the murder of Kalloo Shah is concerned, we find that according to the prosecution witnesses, he was shot dead when he was found present by the accused on the Bair tree. The evidence of Dr. Mathur shows that he found 20 circular gunshot wounds of entry in the upper half of front of chest, over the right shoulder and lower part of front of the neck. The diameter of the dispersal of pellets was 11". Besides that the doctor found four circular gunshot wounds of entry on front of the right shoulder. On internal examination laceration was found in the pleura, the lungs and the heart. According to the doctor, the external and internal injuries found on the body of Kalloo Shah showed that the direction of the shot which hit him was oblique going slightly downwards. The doctor added that it did not appear that Kalloo Shah was on a higher level when he was shot by the assailant. If Kalloo deceased was shot at after he had climbed a Bair tree, as mentioned by the prosecution witnesses, it is not clear as to how he received the injuries of the nature which were found on his body as a result of the shot fired by the accused who was standing on the ground.

19. Apart from the above, we are of the opinion that if the deceased had been shot at while he was present on the tree, he would have fallen on the ground after receiving the fatal injury with considerable force. There would in such an event have been a very large number of bruises and abrasions on the body of the deceased rather than the three abrasion injuries on the right knee and left ankle as found by the doctor.

20. As regards the murder of Gulbahar, the evidence of Bhaggan (PW 9) shows that both he and Makkoo (PW 10) who were examined in connection with that murder, were inimical to the accused. The evidence of Bhaggan shows that the accused, if anything, had reason to be much more inimical to these witnesses than to Gulbahar. No attempt was, however, made by the accused to shoot at either of these two witnesses. Dost Mohammad, P.W. who lodged the first information report was not a witness of the murder of Gulbahar. In the report lodged by Dost Mohammad, however, there was a reference to the murder of Gulbahar in the presence of Makkoo chamar. There was no mention of Bhaggan in the report. Question arises as to how Dost Mohammad could mention that Makkoo had witnessed the murder of Gulbahar in the report. The case of the prosecution appears to have been that Dost Mohammad had met Makkoo at 11 a.m. before Dost Mohammad got the report written and lodged it at the police station. This version of the prosecution is, however, contradicted by Makkoo. In the course of his statement before the committing magistrate, with which he was confronted, Makkoo stated that Dost Mohammad had come to the witness at about 2 p.m. and had enquired about the incident. Bhaggan admits that he had no talk regarding the occurrence with any one on the day of occurrence. If Dost Mohammad came to know from Makkoo at about 2 p.m. that the murder of Gulbahar had been committed in the presence of Makkoo, the mention of that fact in the first information report would tend to show that the said report was lodged after 2 p.m. and not at 12.15 p.m. as alleged by the prosecution.

21. Coming to the murder of Sri Ram, we find that the prosecution examined Santosh Kumar (PW 3), who is eight-years-old son of Sri Ram, and Shakuntla Devi (PW 4), wife of Sri Ram. According to both these witnesses, they were present at the house when the accused came and shot at Sri Ram. Santosh Kumar admits that he is a student of a school and the school started at 9 a.m. According to Santosh Kumar, he was in good health on the day of occurrence and was about to leave for the school when the incident took place. As the murder of Sri Ram took place at about 10.30 a.m., Santosh Kumar should normally have been present in his school and not at his house at the time of the murder of Sri Ram. Attempt was made by Shakuntla Devi to show that Santosh Kumar was present in the house by saying that Santosh Kumar was not feeling well on the day of occurrence. Shakuntla Devi added that Santosh Kumar had been running temperature for two or three days before the occurrence and because of the illness, Santosh Kumar was present in the house. Shakuntla Devi is, however, contradicted by Santosh Kumar, according to whom, he was neither ill nor on leave on the day of occurrence. It would, thus, appear that an attempt has been made to induct Santosh Kumar as a witness of the occurrence even though he was not present at the scene of occurrence. This fact, in our opinion, would affect the veracity of the evidence not only of Santosh Kumar but also that of Shakuntla Devi who has deposed that Santosh Kumar too was present at the time of the murder of Sri Ram.

22. As regards the murder of Dhunnu, we find that the following three injuries were found on his body at the time of the post mortem examination :

"1. Gunshot lacerated wound 4" X 2" skull cavity on left side of forehead, left temple and left ear region, with extensive lacerations of all soft tissues, bleeding and clot formations and comminuted fractures had shattering of skull bones and bones of

temple and face. There was blackening and scorching around the wound.

2. Gunshot wound of Entry 2 1/4" X 1" with inverted margins, on right side front of chest, 1" below the right clavicle. There was blackening and tattooing around the wound.

3. Multiple (15-16) small circular gunshot wounds of entry each 1/10" X 1/10" on back of left shoulder and on left scapular region."

According to Dr. Mathur, injury No. 1 was caused by discharge of a firearm from the left side of face from a distance of less than two yards, possibly a very close range. Injury No. 2 was caused by the discharge of a fire-arm from (sic) in front from a distance of less than two yards. Injury No. 3 was caused by the discharge of a fire-arm from behind from a distance of over two yards. The doctor added that Injuries 1 and 3 could not have resulted from the same shot even if the deceased had his head turned towards left at the time of the occurrence. According further to the doctor, injury No. 3 was caused from a longer range than injury No. 1. The High Court found that the evidence of Dr. Mathur showed that three shots had been fired on Dhunnu, while according to the eye-witness, two shots had been fired. Looking to all the facts, we find no cogent ground to take a different view.

23. Another infirmity in the prosecution evidence of which mention may be made is that no ballistic expert was examined in this case to show that the different empty cartridges which were recovered by the police had been fired from the gun of the accused.

24. We, therefore, are of the opinion that no case has been made for interfering with concurrent findings of acquittal of the Sessions Judge and the High Court. The appeals consequently fail and are dismissed.

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